

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MYASSAR ELIAS NADDOUR,

Plaintiff,

V.

CAROLYN V. COLVIN, Acting
Commissioner of Social Security,

Defendant.

Case No.: 13-CV-1407-BAS (WVG)

**ORDER GRANTING PLAINTIFF'S
MOTION FOR AUTHORIZATION
OF ATTORNEYS' FEES UNDER 42
U.S.C. § 406(b)**

[DOC. NO. 22]

Plaintiff brought this action seeking judicial review of a final administrative decision denying his application for disability benefits under Title II of the Social Security Act (“the Act”). (Doc. No. 1.) By Order filed September 23, 2014, Plaintiff’s motion for summary judgment was granted, and the case was remanded for further proceedings. (Doc. No. 18.) On July 7, 2016, counsel for Plaintiff filed a motion for an award of attorney’s fees pursuant to 42 U.S.C. § 406(b). (Doc. No. 22.)

At the outset of the representation, Plaintiff and his counsel entered into a contingent-fee agreement. (Doc. No. 22-4 at 1-2.) Pursuant to that agreement, Plaintiff's counsel now seeks attorney's fees in the amount of \$30,105.75, which represents 18.8 percent of the retroactive disability benefits received by Plaintiff on remand, for approximately 28.3 hours of attorney time expended on this matter. (Doc. No. 22-2 at 2.)

1 On July 18, 2016, Defendant filed a statement of non-opposition to Plaintiff's counsel's
 2 motion for attorneys' fees. (Doc. No. 24.)

3 Attorneys are entitled to fees for cases in which they have successfully represented
 4 Social Security claimants.

5 Whenever a court renders a judgment favorable to a claimant under this
 6 subchapter who was represented before the court by an attorney, the court may
 7 determine and allow as part of its judgment a reasonable fee for such
 8 representation, not in excess of 25 percent of the total of the past-due benefits
 9 to which the claimant is entitled by reason of such judgment, and the
 10 Commissioner of Social Security may ... certify the amount of such fee for
 payment to such attorney out of, and not in addition to, the amount of such
 past-due benefits.

11 42 U.S.C. § 406(b)(1)(A).

12 "In contrast to fees awarded under fee-shifting provisions such as 42 U.S.C. § 1988,
 13 the fee is paid by the claimant out of the past-due benefits awarded; the losing party is not
 14 responsible for payment." Crawford v. Astrue, 586 F.3d 1142, 1147 (9th Cir.2009) (en
 15 banc) (citing Gisbrecht v. Barnhart, 535 U.S. 789, 802 (2002)). Although an attorney fee
 16 award pursuant to 42 U.S.C. § 406(b) is not paid by the government, the Commissioner
 17 has standing to challenge the award. Craig v. Sec'y Dep't of Health & Human Servs., 864
 18 F.2d 324, 328 (4th Cir.1989), abrogated on other grounds in Grisbrecht, 535 U.S. at 807.
 19 The goal of fee awards under Section 406(b) is to provide adequate incentive to attorneys
 20 for representing claimants while ensuring that the usually meager disability benefits
 21 received are not greatly depleted. Cotter v. Bowen, 879 F.2d 359, 365 (8th Cir.1989),
 22 abrogated on other grounds in Grisbrecht, 535 U.S. at 807.

23 The 25 percent statutory maximum fee is not an automatic entitlement, and the court
 24 must ensure that the fee actually requested is reasonable. Gisbrecht, 535 U.S. at 808–09
 25 ("[Section] 406(b) does not displace contingent-fee agreements within the statutory ceiling;
 26 instead, [Section] 406(b) instructs courts to review for reasonableness fees yielded by those
 27 agreements."). "Within the 25 percent boundary ... the attorney for the successful claimant
 28 must show that the fee sought is reasonable for the services rendered." Id. at 807. "[A]

1 district court charged with determining a reasonable fee award under [Section]
 2 406(b)(1)(A) must respect ‘the primacy of lawful attorney-client fee agreements,’ ‘looking
 3 first to the contingent-fee agreement, then testing it for reasonableness.’ ” Crawford, 586
 4 F.3d at 1148 (quoting Gisbrecht, 535 U.S. at 793 & 808). The Supreme Court has identified
 5 five factors that may be considered in determining whether a fee award under a contingent-
 6 fee arrangement is unreasonable and therefore subject to reduction by the court: (1) the
 7 character of the representation; (2) the results achieved by the representative; (3) whether
 8 the attorney engaged in dilatory conduct in order to increase the accrued amount of past-
 9 due benefits; (4) whether the benefits are large in comparison to the amount of time counsel
 10 spent on the case; and (5) the attorney’s record of hours worked and counsel’s regular
 11 hourly billing charge for non-contingent cases. Crawford, 586 F.3d at 1151–52 (citing
 12 Gisbrecht, 535 U.S. at 808). Below, the Court will consider these factors in assessing
 13 whether the fee requested by Plaintiff’s counsel in this case pursuant to Section 406(b) is
 14 reasonable.

15 Here, there is no indication that a reduction of fees is warranted due to any
 16 substandard performance by counsel. Rather, Plaintiff’s counsel is an experienced attorney
 17 who secured a successful result for Plaintiff. There is also no evidence that Plaintiff’s
 18 counsel engaged in any dilatory conduct resulting in excessive delay. The Court finds that
 19 the \$30,105.75 fee, which represents 18.8 percent of the past-due benefits paid to Plaintiff,
 20 is not excessive in relation to the benefits awarded. In making this determination, the Court
 21 recognizes the contingent fee nature of this case and Plaintiff’s counsel’s assumption of the
 22 risk of going uncompensated in agreeing to represent Plaintiff on such terms. See Hearn
 23 v. Barnhart, 262 F.Supp.2d 1033, 1037 (N.D.Cal. 2003). Finally, Plaintiff’s counsel has
 24 submitted a detailed billing statement in support of the requested fee. (Doc. No. 22–5 at
 25 1–2.)

26 Accordingly, for the reasons stated above, and taking into consideration the lack of
 27 any objection by Plaintiff, as well as Defendant’s statement of non-opposition, the Court
 28 concludes that the fees sought by Plaintiff’s counsel pursuant to Section 406(b) are

1 reasonable. See generally Azevedo v. Commissioner of Social Security, 2013 WL
2 6086666, at *2 (E.D.Cal. Nov. 19, 2013) (granting petition pursuant to Section 406(b) for
3 \$17,893.75 in attorneys' fees); Coulter v. Commissioner of Social Security, 2013 WL
4 5969674, at *2 (E.D.Cal. Nov. 8, 2013) (recommending award of \$15,084.23 in attorneys'
5 fees pursuant to Section 406(b)); Taylor v. Astrue, 2011 WL 836740, at *2 (E.D.Cal. Mar.
6 4, 2011) (granting petition pursuant to 406(b) for \$20,960 in attorneys' fees); Jamieson v.
7 Astrue, 2011 WL 587096, at *2 (E.D.Cal. Feb. 9, 2011) (recommending award of \$34,500
8 in attorneys' fees pursuant to 406(b)).

9 An award of Section 406(b) fees is, however, offset by any prior award of attorney's
10 fees granted under the Equal Access to Justice Act ("EAJA"). 28 U.S.C. § 2412; Gisbrecht,
11 535 U.S. at 796. Here, Plaintiff's counsel was previously awarded \$4,150.00 in EAJA fees
12 (see Doc. No. 21) and the award under Section 406(b) must be offset by that amount.

13 **Accordingly, IT IS HEREBY ORDERED that:**

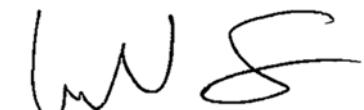
14 1. Plaintiff's July 7, 2016 Motion for Attorneys' Fees (Doc. No. 22) under 42
15 U.S.C. § 406(b), is **GRANTED**;

16 2. Counsel for Plaintiff is awarded **\$30,105.75** in attorney fees under Section
17 406(b). The Commissioner is directed to pay the fee forthwith and remit to Plaintiff the
18 remainder of his withheld benefits; and

19 3. Upon receipt of the \$30,105.75 in attorney fees pursuant to Section 406(b),
20 **counsel shall reimburse Plaintiff in the amount of \$4,150.00** previously paid by the
21 government under the EAJA.

22 **IT IS SO ORDERED.**

23 Dated: August 11, 2016



24
25 Hon. William V. Gallo
26 United States Magistrate Judge
27
28